

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

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|---|---|---------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CRIM. NO. 2003-0028 |
| |) | |
| VANROY WENDALL BENJAMIN, JR. |) | |
| |) | |
| Defendant |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

AMENDED ORDER

The Court granted a motion by the Government to reconsider its Order entered on November 26, 2003 regarding Defendant Benjamin's Motion to Dismiss, docket item # 57. After reconsidering the matter, the Court finds it necessary to enter this Amended Order.

I. Background

On September 16, 2003, Defendant Vanroy Wendall Benjamin, Jr. was charged by Indictment with one count of corruptly threatening, influencing, obstructing, and impeding the due administration of justice in violation of 18 U.S.C. § 1503 (Count 1) and one count of corruptly attempting to influence a juror in respect to a decision of cause and proceeding in violation of 14 V.I.C. § 1501(4) (Count 2). The charges stem from Defendant's alleged action of making a threatening gesture by slashing and cutting motion across his neck to the petit jury

during the trial for United States of America and the Government of the Virgin Islands v. George Osborne and Jay Watson, Criminal No. 2002-0125, in the District Court for the Virgin Islands.

On October 6, 2003, Defendant Benjamin filed a Motion to Dismiss on the basis that the Indictment fails to describe the offenses charged with the particularity required by the Sixth Amendment and made applicable to the people of the Virgin Islands by Section 3 of the Revised Organic Act of 1954. A hearing was held on this matter on November 26, 2003. At that hearing, the Court inquired whether the Government had intended to charge Defendant with 14 V.I.C. § 1501(4) or 14 V.I.C. § 1501(3) for Count 2. The Government replied that it was charging Defendant with 14 V.I.C. § 1501(4) for Count 2. The Defendant then asked the Government if it was charging Defendant with 14 V.I.C. § 1501(4) rather than 14 V.I.C. § 1501(3) for Count 2 and the Government confirmed that it was charging Defendant with 14 V.I.C. § 1501(4).

Based on the Government's responses, the Court decided that Defendant's Motion to Dismiss should be denied as to Count 1, but granted as to Count 2 because Count 2 did not contain the elements of 14 V.I.C. § 1501(4) and therefore lacked the required specificity. The Government thereafter made a motion to correct the clerical error so that Count 2 would allege a violation of 14 V.I.C. § 1501(3) instead of 14 V.I.C. § 1501(4), and moved that the Court reconsider the Order it entered on November 26, 2003 regarding Defendant's Motion to Dismiss Count 2. The Court granted the Government's motion and will now re-analyze Defendant's Motion to Dismiss as applied to 14 V.I.C. § 1501(3).

II. Analysis

A. Standard for Sufficiency of Indictment

The requirements for the content of an indictment are set forth in Rule 7(c)(1) of the Federal Rules of Criminal Procedure which provides, in part:

The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

In United States v. Rankin, 870 F.2d 109, 112 (3d. Cir. 1989), the Third Circuit adopted the three-prong test for sufficiency of an indictment set forth by the U.S. Supreme Court in Russell v. United States, 369 U.S. 749, 763 - 764, 82 S.Ct. 1038, 1047, 8 L.Ed.2d 240 (1962). Under this test, an indictment must: (1) include the elements of the offense charged, (2) inform the defendant of what he must prepare to meet, and (3) give the defendant an opportunity to accurately demonstrate to what extent he may plead a former acquittal or conviction in case of a subsequent prosecution.

B. Count 2 - Violation of 14 V.I.C. § 1501(3)

Count 2 of the Indictment, as corrected, charges Defendant with a violation of 14 V.I.C. § 1501(3). Consequently, Count 2 of the Indictment now contains the elements of the charge as required because it mirrors the language of 14 V.I.C. § 1501(3). Furthermore, the Court finds that being charged under 14 V.I.C. § 1501(3) rather than 14 V.I.C. § 1501(4), Defendant is on notice of what he should be prepared to defend against and is permitted to show what extent he may plead to a former acquittal or conviction in a subsequent prosecution if necessary because

the Indictment specifically alleges that the method the Defendant used was to make a slashing motion with his hand across his neck to the jury, during the trial.

III. Conclusion

Accordingly, further to this Court's Order entered November 26, 2003, in the above-captioned matter, it is hereby

ORDERED that Defendant's Motion to Dismiss is **DENIED** in its entirety.

ENTER:

DATED: December 11, 2003

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

ATTEST:

Wilfredo F. Morales
CLERK OF THE COURT

By: _____
Deputy Clerk

cc: Hon. Geoffrey W. Barnard, U.S. Magistrate Judge
St. Clair Theodore, AUSA
Jeffrey B.C. Moorehead, Esq.